

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

32097

FILE: B-218593**DATE: August 29, 1985****MATTER OF: Julie Research Laboratories, Inc.****DIGEST:**

Protest of sole-source award is sustained where the agency, which failed to submit a report responsive to the merits of the protest, did not demonstrate that a sole-source procurement was justified.

Julie Research Laboratories, Inc. protests several orders placed by the Air Force under an Electro Scientific Industries' multiple award Federal Supply Schedule (FSS) contract with the General Services Administration (GSA) for bridge resistance equipment. Julie contends that the agency improperly restricted the procurement to a sole source of supply, Electro, in violation of the Federal Acquisition Regulation. The protester states that it is capable of supplying the required equipment at lower prices.

On February 11, 1985, the Air Force placed a notice in the Commerce Business Daily (CBD) expressing its intent to acquire bridge resistance equipment from Electro on a sole-source basis and inviting firms to express interest in the requirement. Only Electro, which submitted a quotation, responded. The Air Force says, however, that after comparing Electro's quotation to the prices listed in Electro's FSS contract, the contracting officer placed the orders under the schedule contract. On April 4, the Air Force synopsisized the award in the CBD, and on April 30, Julie filed this protest.

In its report to our Office, the Air Force argues that Julie's protest is untimely because it was not filed within 10 working days after the awards were synopsisized in the CBD on April 4. The Air Force report deals only with the timeliness issue. For the reasons that follow, we find the protest timely and sustain it.

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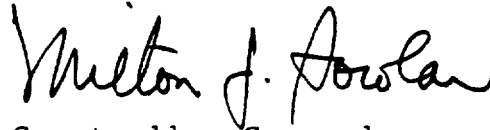
An offeror is not required to file a protest until the basis for protest is known, provided the offeror diligently seeks the information needed to determine whether a basis for protest exists. Douglass Industries, Inc.-- Reconsideration, B-218365.2, May 9, 1985, 85-1 CPD ¶ 517. In this case, although the April 4 notice contained a national stock number and identified the type of equipment, the notice did not, in our view, identify the items being procured specifically to put Julie on notice of a basis for protest. See Compucorp, B-212533, May 22, 1984, 84-1 CPD ¶ 536. In response to that notice, however, Julie wrote to Electro requesting information describing the bridge resistance equipment and filed its protest within 10 working days after it received detailed information on April 17. In finding this protest to be timely, we recognize that Julie did not file a protest in response to the February 11 CBD notice. The sole-source awards about which Julie complains, however, were not made pursuant to the solicitation referred to in that notice, which presumably was canceled, but rather were made under Electro's FSS contract on March 22 and then synopsisized on April 4.

The Air Force's report would have been adequate had we agreed with the agency that the protest was untimely. Where an agency bases its report solely on timeliness it, however, assumes the risk that we may, as here, disagree. In these circumstances, such a report does not comply with the requirement in the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, title VII, 98 Stat. 1175, for the submission of "a complete report," within 25 working days from the date of notification from our Office. (31 U.S.C. § 3553(b)(2) and (b)(2)(A) as added by CICA), or with our Bid Protest Regulations, which require a report "fully responsive to all allegations of the protest which the agency contests." 4 C.F.R. § 21.3(c) (1985). In this case, we advised the Air Force of the risk it ran in responding only with regard to the timeliness of the protest. Nonetheless, the Air Force chose not to submit a substantive report within the 25-day limit^{1/} or to request an extension of time under our regulations. 4 C.F.R. § 21.3(d). Consequently, we will decide the protest based on the record before us and whatever relevant information we independently obtain. See 31 U.S.C. § 3555(b) as added by CICA; 4 C.F.R. § 21.3(g).

^{1/} The Air Force submitted its report in less than the 25-day time limit.

Since the Air Force stated in its report that the protested awards were placed against a FSS contract, we contacted GSA to determine the nature of that contract. We were advised that Electro held a FSS contract (GS-00S-57230) but that the contract had expired on May 31, 1984.

It thus appears that the awards to Electro cannot be justified on the basis of its FSS contract. See Comdisco, Inc., 54 Comp. Gen. 196 (1974), 74-2 CPD ¶ 152. Further, the Air Force has provided us with no other justification for the sole-source awards. Julie, on the other hand, contends that it can supply the items required. Since procurements must be conducted on a competitive basis to the maximum extent practicable, once a protester contends that it is a potential supplier of the items, the burden is on the agency to show that its sole source procurement is properly justified. See Jervis B. Webb Co., et al., B-211724, et al., Jan. 14, 1985, 85-1 CPD ¶ 35. Here, the Air Force has not met that burden. Therefore, we sustain Julie's protest and recommend that the orders be terminated to the extent that delivery has not been made and that the remaining requirements be filled through a competitive procurement.



Acting Comptroller General
of the United States